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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,823	02/05/2004	Simon Mawson	2000U042D1-CON2	5967

7590 12/09/2004

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EXAMINER

CHEUNG, WILLIAM K

ART UNIT PAPER NUMBER

1713

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,823

Applicant(s)

MAWSON ET AL. *Se*

Examiner

William K Cheung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. The request filed on November 29, 2004 for a Request for Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 10/772,823 is acceptable and a RCE has been established. An action on the RCE follows.
2. The Amendment filed October 20, 2004 has been entered. Claims 1-15 are pending.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-15 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Brady, III et al. (US 5,317,036) for the reasons adequately set forth from paragraph 3 of Final office action October 6, 2004.

Applicant's arguments filed October 20, 2004 have been fully considered but they are not persuasive. The examiner acknowledges that claim 1 has been amended to include a "WPR" feature. The "WPR" feature has been fully considered in the instant office action.

Applicants argue that Brady, III et al. are silent on a "bimodal polyolefin" of claim 1 and the examiner fails to provide a rationale for the applied inherency. Applicants also argue that the polymers of Brady, III et al. may not necessary be "bimodal". However, applicants fail to recognize that the examiner has clearly stated that "in view of

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substantially identical monomeric compositions and substantially similar catalyst system between the claimed invention and the disclosure of Brady, III et al., the examiner has a reasonable basis to believe that the density, molecular weight properties of the polymers, the sieved neat polymer fractions obtained from specific mesh sieve sizes having a specific I_2 values, WPR or bimodal polymers being claimed are inherently possessed by the disclosure to Brady, III et al." Although applicants argue that the catalyst of Brady, III et al. is a single metallocene while the applicants polymers are prepared with two or more catalysts, applicants fail to recognize that claim 1 does not recite a polymer prepared by two or more catalysts.

Applicants further argue that Brady, III et al. teach a unimodal polymer because Brady, III et al. is pertained to "a catalyst", "the catalyst", "reactor", and narrow molecular weight distribution. However, applicants must recognize that these argued features are not indication that the polymers produced in the process of Brady, III et al. are unimodal. In view of substantially identical monomeric compositions and substantially similar catalyst system between the claimed invention and the disclosure of Brady, III et al., the examiner has a reasonable basis to set forth a 102-3 rejection.

Regarding applicants' arguments that the claimed polymers are "unprocessed, untreated granular polymer" and that the "sieved neat polymer fractions obtained from 35, 60 and 120 mesh sieve have I_2 values that are within 40% of one another", applicants must recognize that every polymerization processes must go through a step

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of producing an "unprocessed, untreated granular polymer" having various particle or fluff sizes. In view of substantially identical monomeric compositions and substantially similar catalyst system between the claimed invention and the disclosure of Brady, III et al., it is reasonable for the examiner to believe that the "sieved neat polymer fractions obtained from 35, 60 and 120 mesh sieve have I₂ values that are within 40% of one another" is inherently possessed in Brady, III et al.

The examiner acknowledges applicants' comments that the phrase "unprocessed, untreated granular bimodal polyolefin" is not a process limitation, and that it is merely a description of the state of the claimed "polyolefin". The examiner agrees that the phrase is for descriptive purposes only. However, the said phrase is clearly indicating "a description" that the claimed polyolefin has not been "processed" or "treated".

In view of the reasons set forth above, the examiner has clearly set forth proper rationale for the inherency made. If Applicants argue the rationale set forth by the examiner is unacceptable, it is up to applicants to provide evidence that the polymer products of Brady, III et al. is indeed different from the process for preparing the claimed polymers. Since the PTO does not have proper means to conduct experiments, the burden of proof is now shifted to applicants to show otherwise. In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977); In re Fitzgerald, 205 USPQ 594 (CCPA 1980).

Regarding applicants' comments on WO 95/11264 (US 5,539,076), because these prior art are not being addressed in the present rejection, these prior art are irrelevant to the rejection set forth.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

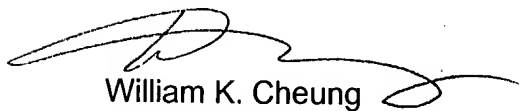
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William K. Cheung

Primary Patent Examiner

December 7, 2004

WILLIAM K. CHEUNG
PRIMARY EXAMINER